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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-119

In The Matter of:
WILLIAM HENRY EDWARDS,
Petitioner.

REPLY AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT.

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QUESTIONS PRESENTED

I.

Does this Court have jurisdiction to consider a Petition For Writ of Certiorari where the Petitioner has failed to present any questions of Federal Law or Constitutionality before the highest state court?

II.

Should this Court consider a Petition for Writ of Certiorari where the requirements of Supreme Court Rules 17 and 21 have not been met?

III.

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate the existence of a substantial federal question?

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OPINION BELOW

The opinion below appears at 302 S.E.2d 339, ___ S.C. ___ (1983), captioned as In The Matter of William Henry Edwards, Respondent. Petitioner has appended a copy of said opinion as Appendix "E" to his Petition.

JURISDICTION

This Honorable Court is without jurisdiction to consider this Petition.

Petitioner has attempted to invoke jurisdiction pursuant to 28 U.S.C. 1257 (3). However, a cursory review of the Petition reveals that Petitioner's alleged federal questions were never raised in the Court below. On page nineteen (19) Petitioner admits that his due process arguments (Questions 3 and 4) were not presented below. Respondent's Answer, which is set out fully herein as Appendix B, raises no federal questions. Furthermore, the Exceptions to the South Carolina Supreme Court which Petitioner has appended to his Petition at Appendix I are bereft of any reference to questions of Federal Law or constitutionality as required by the above-referenced section. Having failed to raise these issues before the Hearing Panel and the South Carolina Supreme Court, Petitioner's attempt to

invoke the jurisdiction of this Court is without foundation. Slagle v. State of Ohio, 81 S.Ct. 1076, 366 U.S. 259, 6 L.Ed.2d 277 (1961); Walters v. City of St. Louis, Missouri, 74 S.Ct. 505, 347 U.S. 231, 98 L.Ed. 660 (1954); Shelley v. Kraemer, 68 S.Ct. 836, 334 U.S. 1, 92 L.Ed. 1161 (1948); Street v. New York, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d 572 (1969); State v. Rinehart, 283 N.W.2d 319, Certiorari denied 100 S.Ct. 1049, 444 U.S. 1088, 62 L.Ed.2d 775 (1979); Webb v. Webb, 101 S.Ct. 1889, 451 U.S. 493, 68 L.Ed.2d 392 (1981).

PROVISIONS OF STATE LAW INVOLVED

The South Carolina Supreme Court Rule on Disciplinary Procedure, Sections 20 and 26(A). (See Petitioner's Appendix "A" and Appendix "A" herein.)

QUESTIONS PRESENTED

I.

Does this Court have jurisdiction to consider a Petition For Writ of Certiorari where the Petitioner has failed to present any questions of Federal Law or Constitutionality before the highest state court?

II.

Should this Court consider a Petition for Writ of Certiorari where the requirements of Supreme Court Rules 17 and 21 have not been met?

III.

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate the existence of a substantial federal question?

STATEMENT OF THE CASE

Petitioner is an attorney practicing law in Columbia, South Carolina. During 1981 Petitioner and his law partner were negotiating with another attorney regarding the merger of their firms. Because such a merger would result in the need for more office space the three had entered into a contract with a Mr. John Gibson for the purchase of an office building. Certain problems arose concerning the contracts which prompted Gibson's attorney to have certain letters hand delivered to the prospective purchasers. On or about January 28, 1982, a law clerk, Tobias Ward, was dispatched to Petitioner's office where he was assaulted by one whom he mistakenly believed to be Petitioner and was told that the letters would not be accepted. The violent

nature of the altercation caused Mr. Ward to file a grievance against Petitioner with the South Carolina Board of Commissioners on Grievances and Discipline, an administrative arm of the South Carolina Supreme Court. At this point Mr. Ward still believed that he had been assaulted by Petitioner Edwards.

On or about February 9, 1982, Petitioner caused a warrant for Mr. Ward's arrest to be issued alleging criminal libel and slander. Mr. Ward was subsequently arrested, booked, and held until his bail could be arranged. On or about February 10, 1982, Petitioner filed a defamation suit against Mr. Ward. Both of these actions were based solely on Mr. Ward's letter to the Board.

On or about February 12, 1982, the Chairman of the Board of Commissioners on Grievances and Discipline received word of the criminal action. Shortly thereafter, the Chairman warned Petitioner that any action against Mr. Ward would violate the Rule on Disciplinary Procedure. On or about February 23, 1982, Petitioner met with Senior Assistant Attorney General Richard Kale, who was assigned to coordinate the grievance investigation. At that meeting it was determined that the grievance was a case of mistaken identity. Mr. Kale also learned of the civil and criminal actions against Mr. Ward. Petitioner was again warned of the possible violations of Section 20 and 26 of the Rule on Disciplinary Procedure.

In spite of the aforementioned warnings Petitioner continued to press

both actions against Mr. Ward. After the magistrate denied a motion to quash the warrant, an appeal was taken before a circuit judge. Petitioner testified at the March 12th appeal hearing and his law partner argued on his behalf against the appeal. On March 24, 1982, the circuit judge issued his order reversing the magistrate and quashing the arrest warrant upon the grounds of the immunity afforded by Section 26 of the Rule on Disciplinary Procedure. A Demurrer to the civil action was sustained upon the same grounds on April 15, 1982, resulting in an involuntary dismissal of the complaint.

After investigation, no assault charges were brought against Petitioner, but the Board's Executive Committee directed that a formal complaint be brought against him because of his

actions against Mr. Ward. A Hearing Panel consisting of three Board members convened a formal hearing on November 16, 1982. Petitioner appeared and was represented by counsel. The Panel issued its report and recommendations on or about December 23, 1982. Said report is appended to Petitioner's Petition as Appendix "C." Petitioner filed exceptions to the Panel Report with supporting brief on or about January 24, 1983. The matter was reviewed by the Executive Committee on January 28, 1983, which voted unanimously to adopt the Hearing Panel's findings of fact and conclusions of law. On February 1, 1983, the Executive Committee made its independent recommendation and certified the record to the South Carolina Supreme Court. The certification is appended to the Petition as Appendix "D."

On March 21, 1983, the Petitioner appeared with counsel before the South Carolina Supreme Court. In neither the exceptions nor the arguments before the Court were any issues raised as to questions of Federal Law or Constitutionality. On April 19, 1983, the Court issued its opinion publicly reprimanding Respondent.

ARGUMENT

I

Lack of Jurisdiction

As indicated by the cases cited above, this Court lacks jurisdiction to consider this matter. The jurisdiction conferred upon this Court by 28 U.S.C. 1257(3) is limited by its express language to those cases where matters of Federal Law or the United States Constitution are drawn into question.

This language has been construed by the cases cited above and numerous others to mean that no review by this Court will be granted unless these federal questions were presented to the Court whose judgment is being challenged. Petitioner has failed to meet this requirement and his Petition should be denied on this basis alone.

II.

Failure to Comply With Supreme Court Rules 17 and 21(h).

Petitioner has failed to comply with Rules 17 and 21(h) because he has failed to "specify the stage in the proceedings, both in the court of first instance and in the appellate court , at which the federal questions sought to be reviewed were raised....," etc. The requirements of Rule 17 are not met

because the lower court decided no federal questions. The obvious reason for these failures is that such federal questions were never raised before the courts below. Petitioner's Answer, which is attached hereto and incorporated by reference herein as Appendix "B," contains no defenses which could remotely be translated into federal questions. As mentioned above, the exceptions which relate to Petitioner (the first ten exceptions are irrelevent to this appeal) presented no federal questions to the South Carolina Supreme Court. Petitioner has appended these exceptions to his Petition as Appendix "I." Even if the federal questions had been raised before the Hearing Panel, Petitioner's failure to preserve them before the South Carolina Supreme Court would have rendered that

Court powerless to decide them. Being unable to comply with Rules 17 and 21(h), Petitioner should not be heard to complain to this Court as to any action taken by the court below. Hulbert v. Chicago, 26 S.Ct. 617, 202 U.S. 275, 50 L.Ed. 1026 (1906).

III.

Lack of Substantial Federal Question.

As the Statement of the Case and the appended documents indicate, the issues presented in this appeal involve an attorney, mistakenly accused of professional misconduct, who took rash and ill-advised steps in retribution against his accuser. In the beginning Petitioner's actions could have been excused as having been hastily conceived in the heat of anger. However, these matters rose to the level of

professional misconduct when he refused to relent after having been warned to abandon his retributive actions by two people who were knowledgeable and authoritative in the field of professional ethics.

The protection of complainants to the Board of Commissioners on Grievances and Discipline is a matter of great concern to the Supreme Court of South Carolina. However, it is clearly a local concern and not a federal question. The ability of the state court to effectively carry out its duties in regard to disciplining attorneys rests largely on the confidence of those with knowledge of wrongdoing that they may come forward without fear of retribution. This is admittedly a very serious matter, certainly serious enough to have prompted the adoption of Section 26(A)

of the Rule on Disciplinary Procedure. The seriousness of the matter is not the controlling factor, however. Rather, in order to grant review this Court must find a substantial federal question as defined within the plain language of 28 U.S.C. 1257. That is, the case must involve a right or immunity created by the Constitution or Laws of the United States. Pan Am. Petroleum Corp. v. Superior Court of Delaware In and For New Castle County, 81 S.Ct. 1303, 366 U.S. 656, 6 L.Ed.2d 584 (1961). Although Petitioner has tried to bootstrap himself into jurisdiction, the plain truth is that the action below involved only whether Petitioner's retributive actions against Complainant Ward constituted misconduct under the Code of Professional Responsibility and the South Carolina Rule on Disciplinary

Procedure. This attempt to invoke the jurisdiction of this Court by attaching constitutional labels to matters of only local concern must be denied as being without a substantial federal question. Seaboard Air Line Ry. Co. v. Watson, 53 S.Ct. 32, 287 U.S. 86, 77 L.Ed. 180 (1932).

CONCLUSION

For the above-stated reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

JOSEPH A. WILSON, III
Chief Deputy Attorney General

CLIFFORD O. KOON, JR.
Assistant Attorney General

BY: _____
ATTORNEYS FOR RESPONDENT.

Appendix "A"

RULE ON DISCIPLINARY PROCEDURE

26. IMMUNITY AND PRIVILEGE

A. Complaints or Grievances submitted to the Board or Executive Committee or testimony or documents with respct thereto shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness.

Appendix "B"

STATE OF SOUTH CAROLINA)	BEFORE THE BOARD
)	OF COMMISSIONERS
COUNTY OF RICHLAND)	ON GRIEVANCES AND DISCIPLINE
IN THE MATTER OF:)	
)	
WILLIAM H. EDWARDS, SR.)	
)	ANSWER
RESPONDENT.)	
)	

Respondents, answering the allegations of the Complaint herein, would respectfully show unto this Board as follows:

1. Each and every allegation contained in the Complaint not specifically admitted, qualified or explained is hereby denied, and strict proof is demanded thereof.

2. Respondents admit the allegation contained in paragraph one (1) of the Complaint.

3. Respondents admit the allegation contained in paragraph two (2) of the Complaint.

4. Respondents admit on information and belief the allegation contained in paragraph 3(a) of the Complaint.

5. Respondents admit the allegation contained in paragraph 3(b) of the Complaint.

6. Respondents deny so much of the allegation contained in paragraph 3(c) which states, "Respondent _____ led or allowed Mr. Ward to believe that he was William Edwards...", and goes further to explain that there was no attempt whatsoever to mislead Mr. Ward in believing that Respondent _____ was William Edwards and that if such a belief was formed, it was done independently of any acts of the

Respondent _____.

7. Respondents admit the remaining allegation of paragraph 3(c) of the Complaint.

8. Respondents deny the allegation contained in paragraph 3(d) of the Complaint.

10. Respondents admit so much of the allegation contained in paragraph 4(a) of the Complaint, which states, "Subsequent to the events...Respondent Edwards had assaulted him and threatened him with bodily harm...".

11. Respondents deny so much of the allegation contained in paragraph 4(a) of the Complaint, which states, "At the time of the Complaint....Edwards had been his assailant...", and go further to explain that Mr. Ward did not have any basis to form such a belief that the Respondents are aware of.

12. Respondents admit the remaining allegation contained in paragraph 4(a) of the Complaint.

13. Respondents admit the allegations contained in paragraphs 4(b) and 4(c) of the Complaint and go further to explain that on February 5, 1982, Respondent Edwards mailed a letter to the Chairman of the Board requesting that the matter before the Board be made public, as was his right.

14. Respondents deny the portion of the allegations contained in paragraphs 4(b) and 4(c), which states, "Such action was based solely upon Mr. Ward's Complaint to this Board...", and go further to explain that Respondent Edwards' actions were based in part on information received from Attorney John R. Harper, II concerning Mr. Ward's assertion that Respondent Edwards had

assaulted him.

15. Respondents deny the allegations contained in paragraph 4(d) of the Complaint.

WHEREFORE, having fully answered the Complaint herein, Respondents pray that the Complaint be dismissed and that they be granted such other and further relief as this Board deems just and proper.

Respectfully submitted,

William H. Edwards